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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,465	12/16/2003	Mark Alan Rosenzweig	13DV-13863	1464
30952	7590	10/17/2006		
HARTMAN AND HARTMAN, P.C. 552 EAST 700 NORTH VAIPARAISO, IN 46383				
			EXAMINER CULBERT, ROBERTS P	
			ART UNIT 1763	PAPER NUMBER

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/707,465	Applicant(s) ROSENZWEIG ET AL.	
	Examiner Roberts Culbert	Art Unit 1763	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant has argued that no basis has been set forth that the prior art of record even mentions "sintered" oxides, much less teaches their removal with KOH. However, the argument is not persuasive since Fernihough expressly teaches heating to temperatures that provide "sintered" particles at (Col. 6, Lines 10-13).

Applicant has argued that the Declaration under CFR 1.132 describes chemical and physical differences that preclude one skilled in the art from having a reasonable expectation of success that the oxidized metallic particles of the admitted prior art (APA) could be removed with caustic hydroxide solutions. However, the argument is not persuasive. The Declaration argues that the oxide particles of the APA comprise pure alumina, whereas the particles of Schlibe Shurman and Chen many other chemicals are present. However, the declaration provides no evidence that the additional impurities, or lack thereof, would be expected to affect the removal by KOH. The Declaration further argues that the oxides of Fernihough have a different porosity or strength. However these statements are only argument, and provide no evidence that the particles have a different porosity, adhered strength or physical or chemical interface. Moreover, the declaration provides no evidence that the alleged differences are large enough that one skilled in the art would expect KOH to be unsuitable for removal of one but not the other. For example, the declaration argues that some of the plug material may be organic and removed a low temperature (600 degrees C) However, Fernihough teaches that residual ceramic is not removed by this low temperature step and must be removed with KOH.



R. Culbert
Examiner
Art Unit 1763



Parviz Hassanzadeh
Supervisory Patent Examiner
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